

No. 11765

United States
Circuit Court of Appeals
For the Ninth Circuit.

GEORGE THOMAS,
Appellant,
vs.

FURNESS (PACIFIC) LIMITED, a corporation
and SHAW, SAVILL & ALBION, LTD.,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

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PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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1400 Balfour Building,
351 California Street,
San Francisco, California,**

Attorneys for Defendants and Appellees.

In the Superior Court of the State of California
in and for the City and County of San Francisco

No. 355516

GEORGE THOMAS,

Plaintiff,

vs.

FURNESS PACIFIC LIMITED, THE BLACK
& WHITE COMPANY, a corporation, THE
DOE COMPANY, JOHN DOE and RICH-
ARD ROE,

Defendants.

COMPLAINT FOR DAMAGES

Comes now the plaintiff and for cause of action
alleges:

I.

That the defendant Furness Pacific Limited is a
corporation existing under and by virtue of the
laws of a state unknown to plaintiff, and does busi-
ness and maintains a principal place of office in
the City and County of San Francisco, State of
California, and is within the jurisdiction of the
above-entitled Court.

II.

That the true names of the defendants sued
herein as The Black & White Company, a corpora-
tion, The Doe Company, John Doe and Richard
Roe are presently unknown to plaintiff, and plain-
tiff prays leave to amend this complaint and insert
herein said true names when ascertained.

III.

That during all of the times herein mentioned the defendants owned, managed, operated, navigated, maintained and controlled the British vessel SS Fordsdale, and employed and sued said vessel in [1*] the transportation of freight and passengers for hire in interstate and foreign commerce.

IV.

That on or about May 21, 1946, at or about the hour of 8 p.m., the said SS Fordsdale was docked at the port of Oakland, California, at the Encinal Terminals thereof. That at said time and place plaintiff was a business invitee of defendants and was present on said vessel in his capacity as a stevedore, plaintiff then and there being in the employ of the San Francisco Stevedoring Company, and was present on said vessel during and within the course and scope of his employment by said company, which then and there was engaged in working cargo aboard said vessel at the special instance and request and for and on behalf of defendants herein.

V.

That at said time and place the defendants negligently and carelessly failed to safely and properly maintain said vessel, its maindeck and the winches, appurtenances, gear and appliances of said vessel, and particularly the #1 hatch and winches at the said #1 hatch and the decks in the vicinity of the

* Page numbering appearing at foot of page of original certified Transcript of Record.

said #1 hatch, in the following respects: defendants so negligently and carelessly maintained the winches at the said #1 hatch that said winches leaked oil, which oil thereupon dropped to the maindeck in the vicinity of the said #1 hatch and upon the said #1 hatch, thereby causing said deck and hatch to be in a slippery, dangerous and unsafe condition. That at the said time and place the defendants negligently and carelessly failed to maintain proper and sufficient lights at the said #1 hatch, and the said deck in the vicinity of the said #1 hatch was dark and unlighted, and it was very difficult for plaintiff to see the place about which he was compelled to work aboard said vessel.

That said vessel was unseaworthy in said respects, namely, in that there were insufficient lights present in the vicinity of the said #1 hatch to properly and safely light said deck at said place, and the said winches were unseaworthy in that they leaked oil, [2] which oil fell to and was present on the maindeck in the vicinity of the #1 hatch and on the #1 hatch; and the said vessel was unseaworthy in that the maindeck in the vicinity of the #1 hatch and the said #1 hatch were oily, slippery, and failed to constitute a safe, proper and sufficient surface upon which plaintiff could work and walk while doing this work as a stevedore aboard said vessel.

That as a direct and proximate result of the negligence and carelessness of defendants, and the unseaworthiness of the said vessel, as aforesaid, plaintiff was unable to see where he was working

at the time and place in question, and plaintiff was caused to, and he did, slip and fall on said oily deck in the vicinity of the said #1 hatch and on the #1 hatch, and as a result thereof plaintiff suffered and incurred grievous and severe physical and bodily injuries, as follows: injury to plaintiff's back, injury to his right arm and elbow, injury to his right hand, and injury to his right hip.

The plaintiff at the present time does not know the exact extent of said injury, but is informed and believes and alleges that the injury to his back and right hip are permanent in character. That plaintiff has suffered severe and grievous physical and mental pain and suffering as a result of said injuries. That as a result of said injuries plaintiff has suffered general damages in the amount of \$25,000.

VI.

That at the time of the aforesaid accident plaintiff was gainfully employed as a longshoreman and was earning wages in the sum of \$100 per week. That plaintiff has been unable to work as a result of said injuries from May 21, 1946, until the date hereof, a period of eight weeks, and plaintiff has thereby suffered special damages on account of wage loss in the amount of \$800, which sum and the whole thereof is presently due, owing and unpaid to him by the defendants. [3]

Plaintiff is informed and believes and alleges that he will suffer further wage loss in the future as a result of said injuries, and plaintiff prays leave to amend his complaint and insert herein, or to

offer proof thereof at the time of trial, the amount of such further wage loss when ascertained.

VII.

That as a result of said injuries plaintiff was caused to, and he did, secure the services of doctors, nurses, hospital, and incurred expenses for X-rays, medicines and medical supplies. That plaintiff does not know the exact cost of said medical services and supplies and prays leave to amend his complaint and insert herein, or to offer proof at the time of trial, said cost when said has been ascertained; and plaintiff also prays leave to amend his complaint and insert herein, or to offer proof at the time of trial, the amount of such other and further costs for medical services and expenses which he may incur and which he is informed and believes and alleges that he will incur in the future.

Wherefore, plaintiff prays judgment against defendants, and each of them, in the sum of \$25,800, plus cost of medical services and supplies, future wage loss and medical services and expenses, costs of suit herein, and for such other and further relief as is meet and just in the premises.

Dated July 16, 1946.

GLADSTEIN, ANDERSEN,
RESNER, SAWYER &
EDISES,
By HERBERT RESNER,
Attorneys for Plaintiff. [4]

State of California,
City and County of San Francisco—ss.

George Thomas, being first duly sworn, deposes and says:

That he is the person named in the within and foregoing action; that he has read the complaint on file herein and knows the contents thereof; that same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters he believes it to be true.

GEORGE THOMAS.

Subscribed and sworn to before me this 16th day of July, 1946.

[Seal] DOROTHY H. McLENNON,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Aug. 24, 1946. C. W. Calbreath, Clerk. [5]

[Title of Superior Court and Cause.]

NOTICE OF FILING RECORD ON REMOVAL
AND COST BOND

To plaintiff above named and to Messrs. Gladstein, Andersen, Resner, Sawyer and Edises, his attorneys:

You and Each of You Will Please Take Notice, and You Are Hereby Notified, that the record on removal in the above entitled action, together with a cost bond in the sum of \$250.00, conditioned as required by Rule 9(f) of the above entitled court, were filed in the above entitled court on the 24th day of August, 1946.

FARNHAM P. GRIFFITHS,
McCUTCHEN, THOMAS,
MATTHEW, GRIFFITHS
& GREENE,
Attorneys for Defendant
Furness (Pacific) Limited.

[Acknowledgment of receipt of service.]

[Endorsed]: Filed Aug. 26, 1946. C. W. Calbreath, Clerk. [6]

[Title of Superior Court and Cause.]

MOTION FOR SUMMARY JUDGMENT
AND NOTICE OF MOTION

Defendant Furness (Pacific) Limited moves the court as follows:

I.

That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in favor of defendant on the ground that there is no genuine issue as to any material fact, and that defendant is entitled to judgment as a matter of law.

II.

That defendant's time to answer or otherwise move with respect to the complaint under Rule 12 of the Federal Rules of Civil Procedure be extended until the disposition of this motion.

III.

This motion is based upon:

- (1) The affidavit of James West, Manager of Furness (Pacific) Limited, filed herewith;
- (2) The complaint on file in this action; and
- (3) The reasoning and authorities set forth in defendant's memorandum filed herewith.

/s/ FARNHAM P. GRIFFITHS,
McCUTCHEON, THOMAS,
MATTHEW, GRIFFITHS
& GREENE,
Attorneys for Defendant
Furness (Pacific) Limited.

Notice of Motion

To the plaintiff, George Thomas, and to Messrs. Gladstein, Andersen, Resner, Sawyer and Edises, his attorneys:

You and each of you will please take notice that the undersigned will, on the 30th day of September, 1946, at the hour of 10 o'clock or as soon thereafter as counsel can be heard, appear before the Honorable A. F. St. Sure, in his courtroom in the Post Office Building, 7th and Mission Streets, San Francisco, California, and move that a summary judgment be entered in favor of defendant in accordance with Rule 56 of the Federal Rules of Civil Procedure. In support of said motion and filed herewith is a draft of the order which defendant proposes; a copy of an affidavit of James West, Manager of Furness (Pacific) Limited, which defendant will present in support of the motion; and a memorandum of points and authorities on which defendant relies.

Dated, San Francisco, California, this 13th day of September, 1946.

/s/ FARNHAM P. GRIFFITHS,
McCUTCHEN, THOMAS,
MATTHEW, GRIFFITHS
& GREENE,
Attorneys for Defendant
Furness (Pacific) Limited.

[Acknowledgment of receipt of service.]

[Endorsed]: Filed Sept. 13, 1946. C. W. Calbreath, Clerk. [8]

[Title of Superior Court and Cause.]

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

**State of California,
City and County of San Francisco—ss.**

James West, being first duly sworn, deposes and says:

That he is the Manager of Furness (Pacific) Limited, defendant in the above entitled action; that he is familiar with the operations and affairs of said defendant, and that if sworn as a witness he could competently testify to the following facts:

1. That defendant Furness (Pacific) Limited was not at any time referred to in the complaint herein, and is not now, the owner, owner pro hac vice or charterer of the SS Fordsdale or connected with said vessel in any way other than as herein-after stated.

2. That on April 24, 1946, the SS Fordsdale was redelivered to her owners at San Francisco by the British Ministry of War Transport, an agency of the Government of Great Britain, to which she had been requisition time-chartered by her owners for a period of several years. That said owners requested defendant Furness (Pacific) Limited to act for them as agents for the vessel after redelivery for the purpose of arranging for provisions, fuel, berthing, loading of cargo, and such repairs as should be requested by the Master.

That this request was not incorporated in any formal contract or agreement between said owner and said defendant.

3. That pursuant to this arrangement, defendant Furness (Pacific) Limited requested the San Francisco Stevedoring Company, plaintiff's employer, to furnish stevedoring services in connection with loading the vessel. That there was no formal contract or agreement between said defendant and plaintiff's employer, the understanding being that the Stevedoring Company would have full [9] charge of, and responsibility for, loading the vessel, subject only to the orders of the Master and Chief Officer.

4. That defendant Furness (Pacific) Limited was not at any time, by reason of agreement with said owners or otherwise, responsible for the navigation, material upkeep or repair of the SS Fordsdale.

5. That the Master and crew of the SS Fordsdale were employees of the owners of the SS Fordsdale; that said crew at all times referred to in the complaint herein was the same as had been employed while the vessel was under requisition time-charter as aforesaid and that defendant Furness (Pacific) Limited took no action in engaging said crew; that at all times referred to in the complaint herein the SS Fordsdale was solely in the possession

and under the control of her owners, and carried the flag of Great Britain.

JAMES WEST.

Subscribed and sworn to before me this 12th day of September, 1946.

[Seal] FRANK L. OWENS,

Notary Public in and for the City and County of San Francisco, State of California.

[Acknowledgment of service.]

[Endorsed]: Filed Sept. 13, 1946. C. W. Calbreath, Clerk. [10]

In the District Court of the United States for the Northern District of California, Southern Division

No. 26335-S

GEORGE THOMAS,

Plaintiff,

vs.

FURNESS (PACIFIC) LIMITED, THE BLACK & WHITE COMPANY, a corporation, THE DOE COMPANY, JOHN DOE and RICHARD ROE,

Defendants.

MOTION TO ADD NEW PARTY DEFENDANT (RULE 21, FEDERAL RULES OF CIVIL PROCEDURE)

To defendants above named and to Messrs. McCutchen, Thomas, Matthew, Griffiths & Greene, their attorneys:

You, and Each of You, Will Please Take Notice

that plaintiff by his attorneys, Messrs. Gladstein, Andersen, Resner, Sawyer & Edises and Herbert Resner, Esq., will move the above-entitled Court in the Department of the Honorable A. F. St. Sure, Judge thereof, at his courtroom, Post Office Building, 7th and Mission Streets, San Francisco, on Monday, December 16, 1946, at the hour of 11 o'clock a.m., or as soon thereafter as counsel can be heard, for its order adding as a new party defendant in the above-entitled action Messrs. Shaw, Savill & Albion, Ltd., and for the issuance of summons against said named persons. [11]

Said motion will be based upon this notice, upon the Memorandum of Points and Authorities attached hereto, upon the affidavit of Herbert Resner, Esq., filed and served herewith, and upon all of the files, records, papers and proceedings in the above-captioned matter.

Dated, December 10, 1946.

GLADSTEIN, ANDERSEN,
RESNER, SAWYER &
EDISES,
By HERBERT RESNER,
Attorneys for Plaintiff.

Memorandum of Points and Authorities
I.

A new party defendant may be added to an action on motion of any party at any stage of the proceedings on such terms as are just.

Rule 21, Federal Rules of Civil Procedure;
Moore's Federal Practice, Vol. 2, p. 2189.

II.

Additional or separate summons shall issue against any defendants upon request of plaintiff.

Rule 4(a), Federal Rules of Civil Procedure.

[Acknowledgment of receipt of copy.]

[Endorsed]: Filed Dec. 11, 1946. [12]

[Title of District Court and Cause.]

AFFIDAVIT OF HERBERT RESNER

State of California,

City and County of San Francisco—ss.

Herbert Resner, being first duly sworn, deposes and says:

That he is the attorney for plaintiff George Thomas. That plaintiff is a stevedore who was injured aboard the SS Fordsdale on May 21, 1946, while the said vessel was docked at San Francisco Harbor. That plaintiff was injured as the result of the negligence of the owners, operators, charterers, or managers of said SS Fordsdale.

That affiant has been informed by counsel for Furness (Pacific) Limited, a defendant herein, that Messrs. Shaw, Savill & Albion, Ltd., of 88 Leadenhall Street, London, England, are, and at said time were, the owners of said SS Fordsdale. That it therefore appears that Messrs. Shaw, Savill & Albion, Ltd., are a necessary party to the within proceeding and should be added as a [13] party defendant herein.

Wherefore, affiant prays that the Court make and cause to be entered its order adding Messrs. Shaw, Savill & Albion, Ltd., as a party defendant herein and directing and ordering an additional summons to issue as against said defendant.

HERBERT RESNER.

Subscribed and sworn to before me this 10th day of December, 1946.

[Seal] DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Acknowledgment of receipt of copy.]

[Endorsed] Filed Dec. 11, 1946. [14]

[Title of District Court and Cause.]

ORDER OF COURT

The motion of plaintiff to add new party defendant came on for hearing before the above-entitled Court, the Honorable George B. Harris, Judge thereof, on Monday, February 24, 1947, and the Court having heard from counsel for the respective parties and being fully advised in the premises,

Now, Therefore, It Is Hereby Ordered that the said motion to add new party defendant, to wit, Messrs. Shaw, Savill & Albion, Ltd., be and it hereby is granted.

It Is Further Ordered that the Clerk of the above-entitled Court issue, and he herewith is

ordered and directed to issue summons against the said Messrs. Shaw, Savill & Albion, Ltd.

Done in Open Court This 3rd day of March, 1947.

GEORGE B. HARRIS,
Judge of the District Court.

[Endorsed]: Filed March 3, 1947. [15]

[Title of District Court and Cause.]

FIRST AMENDED COMPLAINT FOR DAMAGES

Comes now the plaintiff and for cause of action alleges:

I.

That the defendants Furness (Pacific) Limited and Shaw, Savill & Albion, Ltd., are corporations or other forms of business association or organization, existing under and by virtue of the laws of states unknown to plaintiff, and do business and maintain principal places of business in the City and County of San Francisco, State of California, and are within the jurisdiction of the above-entitled Court.

II.

That the true names of the defendants sued herein as The Doe Company, John Doe and Richard Roe are presently unknown to plaintiff, and plaintiff prays leave to amend this complaint and insert herein said true names when ascertained.

III.

That during all of the times herein mentioned the defendants [16] owned, managed, operated, navigated, maintained and controlled the British vessel SS Fordsdale, and employed and used said vessel in the transportation of freight and passengers for hire in interstate and foreign commerce.

IV.

That on or about May 21, 1946, at or about the hour of 8 p.m., the said SS Fordsdale was docked at the port of Oakland, California, at the Encinal Terminals thereof. That at said time and place plaintiff was a business invitee of defendants and was present on said vessel in his capacity as a stevedore, plaintiff then and there being in the employ of the San Francisco Stevedoring Company, and was present on said vessel during and within the course and scope of his employment by said company, which then and there was engaged in working cargo aboard said vessel at the special instance and request and for and on behalf of defendants herein.

V.

That at said time and place the defendants negligently and carelessly failed to safely and properly maintain said vessel its maindeck and the winches, appurtenances, gear and appliances of said vessel, and particularly the #1 hatch and winches at the said #1 hatch, and the decks in the vicinity of the said #1 hatch, in the following respects: defendants so negligently and carelessly maintained

the winches at the said #1 hatch that said winches leaked oil, which oil thereupon dropped to the maindeck in the vicinity of the said #1 hatch and upon the said #1 hatch, thereby causing said deck and hatch to be in a slippery, dangerous and unsafe condition. That at the said time and place the defendants negligently and carelessly failed to maintain proper and sufficient lights at the said #1 hatch, and the said deck in the vicinity of the said #1 hatch was dark and unlighted, and it was very difficult for plaintiff to see the place about which he was compelled to work aboard said vessel.

That the said vessel was unseaworthy in said respects, namely, in that there were insufficient lights present in the vicinity of the said #1 hatch to properly and safely light said deck at said place, and the [17] said winches were unseaworthy in that they leaked oil, which oil fell to and was present on the maindeck in the vicinity of the #1 hatch and on the #1 hatch; and the said vessel was unseaworthy in that the maindeck in the vicinity of the #1 hatch and the said #1 hatch were oily, slippery and failed to constitute a safe, proper and sufficient surface upon which plaintiff could work and walk while doing his work as a stevedore aboard said vessel.

That as a direct and proximate result of the negligence and carelessness of defendants, and the unseaworthiness of the said vessel, as aforesaid, plaintiff was unable to see where he was working at the time and place in question, and plaintiff was caused to, and he did, slip and fall on said oily deck

in the vicinity of the said #1 hatch and on the #1 hatch, and as a result thereof plaintiff suffered and incurred grievous and severe physical and bodily injuries, as follows: injury to plaintiff's back, injury to his right arm and elbow, injury to his right hand, and injury to his right hip.

That plaintiff at the present time does not know the exact extent of said injury, but is informed and believes and alleges that the injury to his back and right hip are permanent in character. That plaintiff has suffered severe and grievous physical and mental pain and suffering as a result of said injuries. That as a result of said injuries plaintiff has suffered general damages in the amount of \$25,000.

VI.

That at the time of the aforesaid accident plaintiff was gainfully employed as a longshoreman and was earning wages in the sum of \$100 per week. That plaintiff has been unable to work as a result of said injuries from May 21, 1946, until the date hereof, a period of eight weeks, and plaintiff has thereby suffered special damages on account of wage loss in the amount of \$800, which sum and the whole thereof is presently due, owing and unpaid to him by the defendants.

Plaintiff is informed and believes and alleges that he will suffer further wage loss in the future as a result of said injuries, and plaintiff prays leave to amend his complaint and insert herein, or to offer proof thereof at the time of trial, the amount of such further [18] wage loss when ascertained.

VII.

That as a result of said injuries plaintiff was caused to, and he did, secure the services of doctors, nurses, hospital, and incurred expenses for X-rays, medicines and medical supplies. That plaintiff does not know the exact cost of said medical services and supplies and prays leave to amend his complaint and insert herein, or to offer proof at the time of trial, said cost when same has been ascertained; and plaintiff also prays leave to amend his complaint and insert herein, or to offer proof at the time of trial, the amount of such other and further costs for medical services and expenses which he may incur and which he is informed and believes and alleges that he will incur in the future.

Wherefore, plaintiff prays judgment against defendants, and each of them, in the sum of \$25,800 plus cost of medical services and supplies, future wage loss and medical services and expenses, costs of suit herein, and for such other and further relief as is meet and just in the premises.

Dated, February 25, 1947.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,
By HERBERT RESNER. [19]

State of California,
City and County of San Francisco—ss.

Herbert Resner, being first duly sworn, deposes and says:

That he is attorney for plaintiff in the within and foregoing amended complaint and that he makes this verification for and on behalf of said plaintiff for the reason that said plaintiff is presently out of the county in which affiant has his office; that affiant has read said amended complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on his information or belief, and as to those matters he believes it to be true.

HERBERT RESNER.

Subscribed and sworn to before me this 25th day of February, 1947.

ALICE C. MORSE,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed March 3, 1947. [20]

[Title of District Court and Cause.]

**SPECIAL APPEARANCE AND MOTION TO
QUASH SERVICE OF SUMMONS UPON
SHAW, SAVILL AND ALBION CO., LTD.,
AND NOTICE OF HEARING SAID SPE-
CIAL APPEARANCE AND MOTION**

Defendant Shaw, Savill & Albion Co., Ltd., appearing specially herein and not otherwise, moves the court to quash the service of summons upon said defendant and the return of service of said summons and to dismiss the action as to said defendant for lack of jurisdiction of the person of said defendant on the grounds that:

- (1) Said defendant is a corporation organized and existing under the laws of Great Britain and was not and is not subject to service of process within the State of California.
- (2) Said defendant has not been personally served with a copy of the summons and complaint within the State of California.
- (3) Service of a copy of the summons and complaint on James West, General Manager of Furness (Pacific) Limited, as recited in the return of service upon defendant Shaw, Savill and Albion Co., Ltd., is not effective service upon said defendant for the reason that said Furness (Pacific) Limited is not

an agent of defendant Shaw, Savill and Albion Co., Ltd., authorized by appointment or by law to receive service of process.

FARNHAM P. GRIFFITHS,
McCUTCHEON, THOMAS,
MATTHEW, GRIFFITHS &
GREENE,
Attorneys for Defendant
Shaw, Savill & Albion
Co., Ltd.

To plaintiff herein and to Messrs. Gladstein, Andersen, Resner & Sawyer, his attorneys:

Notice is hereby given and you and each of you are hereby notified that on March 17, 1947, at the hour of 10 o'clock a.m. on said date or as soon thereafter as counsel may be heard, in the courtroom of the Honorable George B. Harris, Judge of the above entitled Court, situated in the Post Office Building at 7th and Mission Streets, San Francisco, California, defendant Shaw, Savill & Albion Co., Ltd., will call on for hearing and argument the above special appearance and motion to quash service of summons herein filed by said defendant.

Dated, San Francisco, California, March 11th, 1947.

FARNHAM P. GRIFFITHS,
McCUTCHEON, THOMAS,
MATTHEW, GRIFFITHS &
GREENE.

[Acknowledgment of receipt of service.]

[Endorsed]: Filed March 11, 1947. [22]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF SPECIAL APPEARANCE AND MOTION TO QUASH SERVICE OF SUMMONS UPON DEFENDANT SHAW, SAVILL & ALBION CO., LTD.

State of California,

City and County of San Francisco—ss.

James West, being first duly sworn, deposes and says:

That he is the manager of Furness (Pacific) Limited, purported to be served herein as agent for defendant Shaw, Savill & Albion Co., Ltd.; that he is familiar with such operations of said defendant as have been performed within the State of California; and that if sworn as a witness he could competently testify to the following facts:

(1) That defendant Shaw, Savill & Albion Co., Ltd., is a corporation organized and existing under the laws of Great Britain; that said defendant is not now and never has been qualified to do business in California; that said defendant does not now own, and has never owned, any real or personal property in the State of California; that the principal offices of said defendant are in London, England; that vessels owned by said defendant have never called at California ports regularly or at all except as hereinafter set forth.

(2) That for several years prior to April 24, 1946, the SS Fordsdale, owned by said defendant, was time chartered to the British Ministry of War

Transport, an agency of the government of Great Britain; that on April 4, 1946, on orders from said time charterer or of the authorized agent of said time charterer, the SS Fordsdale entered the harbor of San Francisco and moored at the United States Naval Supply Depot, Oakland, California; that on April 24, 1946, upon the expiration of said time charter said vessel was redelivered to said defendant; that on April 25, 1946, said vessel proceeded to Portland, Oregon, to load cargo for carriage to Great Britain; that on May 18, [23] 1946, said vessel returned to the port of San Francisco and moored at the Encinal Terminal, Alameda, California, to load additional cargo; that on May 22, said vessel, having loaded cargo, proceeded to the port of Los Angeles to load additional cargo; that said vessel loaded cargo at Los Angeles on May 24 and 25 and departed from Los Angeles on May 26, 1946, for Great Britain.

(3) That vessels owned by said defendant regularly operate in the trade between ports of the United Kingdom and ports of Australia and the Southwest Pacific.

(4) That Furness (Pacific) Limited acted as agent for the vessel only to the extent set forth in the affidavit of the undersigned dated September 12, 1936, and filed in, and made a part of the record of this case on September 13, 1946; that Furness (Pacific), acting as such agent, collected prepaid freight for the account of said defendant in the amount of approximately \$5,679; that all settlement of accounts for expenses of the vessel while

at California ports was concluded on or about August 10, 1946; that since said date defendant Furness (Pacific) Limited has had no dealings whatsoever with Shaw, Savill & Albion Co., Ltd., and has not acted, and does not now act, in any capacity whatsoever for and in behalf of defendant Shaw, Savill & Albion Co., Ltd.; that defendant Furness (Pacific) Limited has never acted as agent for, or on behalf of defendant Shaw, Savill & Albion at any time except as herein set forth.

(5) That no officer or other employee of defendant Shaw, Savill & Albion now resides or is physically present within the state of California or ever has been so resident in said State.

JAMES WEST.

Subscribed and sworn to before me this 18th day of March, 1947.

[Seal] CHALMER MUNDAY,
Notary Public in and for the City and County of
San Francisco, State of California.

[Acknowledgment of receipt of service.]

[Endorsed]: Filed May 11, 1947. [24]

In the United States District Court for the
Northern District of California, Southern Division

No. 26335-H

GEORGE THOMAS,

Plaintiff,

vs.

FURNESS (PACIFIC) LIMITED, SHAW,
SAVILL & ALBION, LTD., THE DOE COM-
PANY, JOHN DOE and RICHARD ROE,

Defendants.

ORDER
(Proposed)

Defendant Furness (Pacific) Limited having moved herein for summary judgment, and defendant Shaw, Savill & Albion, Ltd., having filed its special appearance and motion to quash service of summons upon said defendant, and the court having examined the pleadings, affidavits and briefs and having heard testimony of witnesses called by the plaintiff and by the defendants, and the arguments of counsel, It Is Hereby Ordered:

- (1) That the motion for summary judgment made by defendant Furness (Pacific) Limited be, and it hereby is, granted, and that the complaint herein, and it hereby is, dismissed as against said defendant with prejudice to the commencement of another action.

(2) That the motion of defendant, Shaw, Savill & Albion, Ltd., to quash the service of summons upon said defendant herein be, and it hereby is, granted [25] and the complaint herein is dismissed as against said defendant with prejudice to the commencement of another action in this or any other district within the State of California.

Dated, San Francisco, California, May 2nd, 1947.

MICHAEL J. ROCHE,

United States District Judge.

[Acknowledgment of receipt of service.]

[Endorsed]: Filed May 2, 1947. [26]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 2nd day of May, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Michael J. Roche,
District Judge.

No. 26335-R Civil

GEORGE THOMAS

vs.

FURNESS (PACIFIC) LIMITED et al.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT MADE BY DEFENDANT FURNESS (PACIFIC) LIMITED, AND DISMISSING COMPLAINT AS AGAINST SAID DEFENDANT, WITH PREJUDICE, AND ORDER GRANTING MOTION TO QUASH SERVICE OF SUMMONS HEREIN BY DEFENDANT SHAW, SAVILL & ALBION, LTD., AND DISMISSING COMPLAINT, WITH PREJUDICE

It is hereby Ordered that the motion for summary judgment made by defendant Furness (Pacific) Limited be and it is hereby granted, and that the complaint herein be and it is hereby dismissed as against said defendant with prejudice to the

commencement of another action; that the motion of defendant Shaw, Savill & Albion, Ltd., to quash the service of summons upon said defendant herein be and it is hereby granted, and that the complaint herein is dismissed as against said defendant with prejudice to the commencement of another action in this or any other District within the State of California. [27]

[Title of District Court and Cause.]

**NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS, NINTH CIRCUIT**

To defendants above named and to Messrs. McCutchen, Thomas, Matthew, Griffiths & Greene, their attorneys:

Notice Is Hereby Given that George Thomas, plaintiff herein, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the orders of the District Court of May 2, 1947, granting the motion of defendant Furness (Pacific) Limited for summary judgment, granting the motion of defendant Shaw, Savill & Albion, Ltd., to quash service of summons, and from the order dismissing with prejudice the complaint herein, and ordering judgment for defendants.

Dated, July 3, 1947.

**GLADSTEIN, ANDERSEN,
RESNER & SAWYER,
By HERBERT RESNER,
Attorneys for Plaintiff
and Appellant.**

[Endorsed]: Filed July 5, 1947. [28]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Comes now plaintiff herein, George Thomas, by his attorneys Messrs. Gladstein, Andersen, Resner & Sawyer and Herbert Resner, and designates the following papers, documents and records as the record on appeal herein, and requests the Clerk of the above-entitled Court and the reporter thereof to prepare such record and to file same with the Clerk of the Circuit Court of Appeals, as provided by the Federal Rules of Civil Procedure and the Rules of the Circuit Court of Appeals for the Ninth Circuit:

1. All of the pleadings, motions, orders, judgment, and records on file with the Clerk of said District Court, other than the briefs of the parties; and

2. A full and complete transcript of the testimony taken by the reporter on the hearing herein on defendants' various [29] motions to quash service of summons, for summary judgment, and to dismiss the complaint.

Dated, July 3, 1947.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,
By HERBERT RESNER,
Attorneys for Plaintiff.

[Endorsed]: Filed July 5, 1947. [30]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefore, it is hereby Ordered that the Appellant herein may have to and including September 23, 1947, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated, August 14, 1947.

LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed Aug. 14, 1947. [31]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing to the Court therefor, it is hereby ordered that plaintiff and appellant may have to and including October 20, 1947, to file the record on appeal herein in the Circuit Court of Appeals for the Ninth Circuit.

Dated, September 23, 1947.

MICHAEL J. ROCHE,

Judge of the United States
District Court.

Extension of time previously granted: 40 days.

[Endorsed]: Filed Sept. 23, 1947. [32]

United States Circuit Court of Appeals
for the Ninth Circuit

No. 26335-H

GEORGE THOMAS,

Plaintiff and Appellant,

vs.

FURNESS (PACIFIC) LIMITED, ET AL.,
Defendants and Appellees.

**PETITION FOR EXTENSION OF TIME TO
FILE CLERK'S RECORD AND TRAN-
SCRIPT**

Comes now the plaintiff and appellant herein George Thomas by his counsel, Herbert Resner, Esq., and prays that the Court extend time until October 20, 1947, within which the Clerk of the

United States District Court for the Northern District of California, Southern Division, shall file the transcript and record on appeal herein.

Said petition is based upon the affidavit of Herbert Resner served and filed herewith.

Dated, September 30, 1947.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,
HERBERT RESNER,
Attorneys for Plaintiff
and Appellant.

So ordered:

WILLIAM DENMAN,
Acting Senior United States
Circuit Judge.

[Endorsed]: Filed Oct. 2, 1947. Paul P. O'Brien,
Clerk.

A true copy, attest: Oct. 2, 1947. Paul P. O'Brien,
Clerk.

[Endorsed]: Filed Oct. 3, 1947.

(Attached hereto is the affidavit of Herbert Resner in support of petition for extension of time, etc.) [33]

District Court of the United States
Northern District of California

**CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL**

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 33 pages, numbered from 1 to 33, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of George Thomas, Plaintiff, vs. Furness (Pacific) Limited, et al., Defendants, No. 26335-H, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$10.20 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 17th day of October, A. D. 1947.

[Seal]

C. W. CALBREATH,
Clerk.

/s/ M. E. VAN BUREN,
Deputy Clerk. [34]

In the Southern Division of the United States
District Court for the Northern District
of California

Before: Hon. Michael J. Roche,
Judge.

No. 26,335-H

GEORGE THOMAS,

Plaintiff,

vs.

FURNESS (PACIFIC) LIMITED, et al.,

Defendants.

Friday, March 21, 1947

Counsel Appearing:

For Plaintiff: Herbert Resner, Esq.

For Defendants: Brent M. Abel, Esq.

MOTIONS TO QUASH SUMMONS, SUMMARY
JUDGMENT, AND TO QUASH SUBPENA

JAMES WEST

called for the plaintiff; sworn.

The Clerk: Will you state your name to the
court? A. James West.

Direct Examination

By Mr. Resner:

Q. What is your business or occupation?

A. I am Pacific Coast Manager of Furness (Pacific) Limited. [1*]

* Page numbering appearing at top of page of Reporter's certified Transcript of Record.

(Testimony of James West.)

Q. What is Furness (Pacific) Limited?

A. A steamship agency.

Q. Does it operate any vessels of its own?

A. No.

Q. Does it own any vessels? A. No.

Q. When you say it is a steamship agency, what do you mean by that expression?

A. I mean this, a company that acts as agent for any number of shipowners, any one of whom might appoint us to act on their behalf to load or discharge vessels.

Q. Are your activities confined to the port of San Francisco, or do you operate in other Pacific Coast ports?

A. We operate in San Francisco and Los Angeles, and Vancouver, B. C.

Q. Is this concern of yours incorporated?

A. In Canada.

Q. Then it is a Canadian corporation?

A. A Canadian corporation.

Q. Has it been admitted to do business in California? A. Yes.

Q. And have you in this State and with the Secretary of the State of California designated an agent or a representative of your company to receive process in civil matters?

A. I can't answer that now, I don't know. [2]

Q. Is there anyone who does know that you can name?

A. I don't know. Perhaps my attorney can.

(Testimony of James West.)

Mr. Abel: I can answer that. No. Furness (Pacific) Limited has not designated an agent for service of civil process.

Q. (By Mr. Resner): Are you General Manager of Furness (Pacific) Limited in California?

A. Yes.

Q. Are there more than one Furness Companies?

A. In California, just the Furness (Pacific) Limited.

Q. Is there a partnership that is connected with Furness (Pacific)? A. No.

Q. The only company is Furness (Pacific) Limited? A. Yes.

Q. Is that right? A. Yes.

Q. Who are the owners of that company in California?

A. Well, there are not any owners in California. It is a Canadian corporation and the stock in Pacific Furness is owned by stockholders outside of California. I own one share of stock, and I think there may be one other share of stock owned by a resident of California. I could not even answer that. I would have to go and look that up.

Q. But it is your understanding that the overwhelming majority of stock is owned by persons in Canada, is that correct, or [3] in England?

A. I could not answer that question, because I really don't know.

Q. Do you know the stock tie-up, for example, between the people who own Furness (Pacific) Limited and those who own Shaw, Savill & Albion, Ltd? A. No.

(Testimony of James West.)

Q. You don't know that?

A. No. You would have to go to London to get that.

Q. Does your company do business in London?

A. Furness (Pacific) Limited does not. It only does business on this Coast.

Q. Is there any other Furness Company which does business in England?

A. There is a company known as Furness Withy & Company, Limited, London, but I don't know anything about Furness Withy & Company at all.

Q. Do you know whether the people who own Furness (Pacific) Limited also own Furnace Withy & Company in England?

A. I could not answer that question, I do not really know.

Q. Is that information available to you?

A. I would say you would have to go to London to get that information.

Q. What I am asking is, could you get that information?

A. I don't know. I could try, but I don't know whether I would get it or not. I really could not answer that question. [4]

Mr. Abel: I object to this line of questioning. It does not seem to me to be relevant to any of the issues.

Mr. Resner: I think it will appear relevant as the case unfolds.

The Court: Proceed.

Mr. Resner: I will explain why I am doing this at the proper time.

(Testimony of James West.)

Q. Now, who are you responsible to, Mr. West, who are your superior officers, if any?

A. I have not any.

Q. Who makes the policy for the Furness (Pacific) Limited?

A. I do. Well, let me put it this way: the policy that we are following was made by the man I succeeded, J. J. Walsh, who is now general manager of Furness Withy & Company in New York. The policy that we follow was made by him. It is up to me to see that that policy is followed.

Q. The Furness Withy & Company in New York is the same company as Furness Withy & Company of London?

A. I could not answer that question, I don't know.

Q. All you know is it has the same name?

A. The same name.

Q. So that your instructions, if you need any, come from New York, from Furness Withy & Company?

A. Well, it depends on what the subject is about. As to acting as agent for Furness Withy & Company, I get instructions [5] from Furness Withy & Company in New York, on many matters—in some cases I get instructions from principals in London. But as far as the operation of Furness (Pacific) Limited is concerned, that is left in my hands.

Q. You do get instructions from principals in London? A. Yes.

(Testimony of James West.)

Q. Which are the principals in London from whom you get instructions?

A. Furness Withy & Company; we are general agents on the Pacific Coast for Furness Withy & Company.

Q. Do you know the relationship between Furness Withy & Company and Shaw, Savill & Albion, Limited? A. No.

Q. I want to direct your attention to the Fordsdale. You are familiar with that ship?

A. Yes.

Q. Do you recall when she was here last year?

A. Yes, she was here in April, 1946.

Q. According to this affidavit of yours, the Fordsdale entered San Francisco Harbor on April 4, 1946. A. Yes.

Q. And you say that on April 24 the vessel was redelivered to the defendant Shaw, Savill & Albion Company, Limited. A. Yes.

Q. Then you say that on April 25 the vessel proceeded to Portland, to load cargo for carriage to Great Britain. A. That is right.

Q. That on May 18, 1946 the vessel returned to San Francisco and docked at the Encinal Terminal over in Alameda County to load additional cargo.

A. That is right.

The Court: Would you be good enough to give me those dates again?

Mr. Resner: On April 4, 1946 the vessel entered San Francisco Harbor and moored at the United States Naval Supply Depot at Oakland. On April

(Testimony of James West.)

24, 1946 the vessel was redelivered to the defendant Shaw, Savill & Albion Company, Ltd. Prior to that time, according to Mr. West's affidavit, the vessel having been on time charter from its owners, Shaw, Savill & Albion Company, Ltd. to the British Ministry of War Transport, was redelivered on April 24, 1946 at San Francisco.

The Court: Is that correct?

A. That is correct, she was redelivered to her owners on April 24th. I don't know whether the ship was on time charter, or not. She was under requisition, I believe.

Mr. Resner: Of the British Government?

A. Yes.

Q. The time charter, or whatever it was that the British Government had on this ship, terminated on April 24, 1946, when the owners took her over?

A. Yes. [7]

Q. Then on April 25, 1946 the vessel proceeded to Portland, Oregon, to load cargo for Great Britain and then she returned to San Francisco harbor and moored at Encinal Terminal on May 18, 1946. Is that correct? A. Yes.

Q. To load more cargo? A. Yes.

Q. And then on May 22nd, having loaded cargo, she proceeded to the port of Los Angeles to load additional cargo; that the vessel loaded cargo at Los Angeles on May 24th and 25th, and then departed from Los Angeles on May 26th, 1946, for Great Britain. Is that correct? A. Correct.

Q. And from your reading of our pleading you

(Testimony of James West.)

know we claim that Mr. Thomas, the stevedore in this case, was injured on this vessel on May 21, 1946, when she was docked at Encinal Terminal. Is that correct? A. Yes.

Q. Now, with regard to that loading operation over there at Alameda County when Mr. Thomas was injured, and as a matter of fact all of the time that she loaded cargo in San Francisco, you had that vessel under your supervision, is that correct?

A. We ordered stevedores and arranged berth on behalf of the owners of the ship.

Q. Let us get those matters. You got a berth for her at— [8] let us go back to the beginning. When she came to the United States Naval Supply Depot at Oakland on April 4, did you have anything to do with arranging that docking? A. No.

Q. She was still with the British Government then? A. That is right.

Q. On April 24 she was redelivered to Shaw, Savill & Albion Company, Limited?

A. That is right.

Q. Did you have anything to do with that redelivery?

A. Yes, we took redelivery from the British Government on behalf of Shaw, Saville & Albion Company, Ltd.

Q. When you took redelivery, what do you mean by that expression?

A. We signed a receipt to the British Government on behalf of Shaw, Savill & Albion Company, Limited, that the vessel was delivered to us, off the requisition at a certain time.

(Testimony of James West.)

Q. Have you got that receipt?

A. There is a copy of it in the file.

Mr. Resner: May I see it?

Mr. Abel: Yes.

Q. (By Mr. Resner): I hand you here what Mr. Abel tells me is the document, which purports to be a redelivery. A. Yes, that is it.

Q. Signed by Furness (Pacific) Limited for the owners? A. Yes. [9]

Mr. Resner: May I read this into the record, so that the respondent can have it back?

The Court: Yes.

Mr. Resner: This is Form T. 509 (Revised November, 1945). Discharge from H. M. Service of the S S Fordsdale. Port San Francisco, Calif. Date April 24, 1946.

“Part I—Notice of Discharge. Notice is hereby given that the above merchant ship, being no longer required for H. M. Service, is redelivered to and is at the disposal of the owners as from 5 p. m. on this 24th day of April, 1946.”

It is signed by F. G. Archbold.

Q. Is that right, Mr. West?

A. That is right.

Mr. Resner: Who signed himself as acting for Salvage Association, London, for Ministry of War Transport. That is correct?

The Witness: That is right.

(Testimony of James West.)

Mr. Resner: "Part II. Bunker fuel.

"It is hereby certified that at the time stated above there were 1080 tons of fuel oil remaining on board.

"It is agreed by W. O. T. and Furness (Pacific) Limited, Agents for the owners, that vessel's off survey is to be held at a future date, the time and place of which is to be agreed upon between the Shaw, Savill & Albion [10] Company and the W. O. T. in London. For and on behalf of owners Furness (Pacific) Limited, as agent (for owners C. E. Holland)."

It is signed for Ministry of War Transport by F. G. Archbold.

Q. By the way, who is Mr. Archbold?

A. He is a marine surveyor.

Q. Of San Francisco?

A. He was in San Francisco at that time. He was representative at that time of the London Salvage Association, which redelivered the ship on behalf of the Ministry of War Transport.

Q. Was that the association which made arrangements to redeliver various ships the British Government had during the war to the owners?

A. Yes.

Q. Was he in California and in San Francisco at the time? A. He was.

Q. I mean was that his job here at the time?

A. No, he was Lloyd's Surveyor at that time,

(Testimony of James West.)

and he acted for the Salvage Association to re-deliver all ships that were redelivered, off requisition.

Q. Do you know if Shaw, Savill & Albion, Ltd. was a member of the Salvage Association of London? A. I would not have any idea.

Q. Or Furness Withy & Company? [11]

A. I could not answer that.

Mr. Resner: "Note: This form is to be prepared in triplicate by the person redelivering the ship on behalf of the Ministry of War Transport.

"For ships redelivered in the United Kingdom, copies should be disposed of as follows: One copy to owner's representative. One copy to Assistant Secretary A. T. Gen. Division, Ministry of War Transport, Berkeley Square House, London, W. 1. One copy to Finance Division (F2) Ministry of War Transport, Grand Hotel, Blackpool.

"For ships redelivered abroad, copies should be disposed of as follows: One copy to owner's representative. Two copies to the Salvage Association, Lloyd's Building, Leadenhall Street, London.

"D50083-1, 40,000 D-d 1072, 1-46."

Q. This is the copy of the paper that you have kept here as a part of your file? A. Yes.

Q. Now, where did you get your instructions to take over the Fordsdale?

A. We got them from Shaw, Savill & Albion, Limited.

Q. Directly or through Furness Withy & Company?

(Testimony of James West.)

A. I could not answer that question, but the file is right there. There is a wire in it from either Furness Withy & Company or from Shaw, Savill & Albion. [12]

Mr. Resner: At this time, we might save time, Mr. Abel, if I might look through the papers which I have subpoenaed here. Have you any objection?

Mr. Abel: No.

The Court: We will take a recess for a few minutes.

(After recess:)

Mr. Resner: During the recess, Mr. West, I have gone through this file that you have kindly brought to the court, you and Mr. Abel, and there are some things which I think could help us in getting some light on this case. For example, there is here a document which is on the letterhead of Shaw, Savill & Albion Company, Ltd. and Aberdeen & Commonwealth Line, and I will ask you to tell us what that is, please.

A. I would say that was a seaworthy certificate, a number of which are supplied to every vessel, and it is filled out by the various mates and signed by the master, showing that everything is in good order and condition at the time the vessel leaves its last port.

Q. This was at the port of Los Angeles on the 26th of May, 1946?

A. That would be the leaving date from Los Angeles.

(Testimony of James West.)

Q. How do you happen to have this copy?

A. Because it is made out in duplicate and one copy is kept in our file in San Francisco.

Q. It was furnished to you by the master, I take it?

A. It was filled out on the ship, the forms are on the ship, [13] we do not have them.

Q. Mr. Ireland is the ship's master?

A. Yes.

Q. He signs this and sends it up to you?

A. Yes.

Q. The file which I hold in my hand is your file?

A. Yes. In all probability it was sent on to the owners in London.

Mr. Resner: I do not want to take this file away from respondent, here, but may this be considered as a document in evidence in this matter?

Mr. Abel: That is agreeable.

Mr. Resner: So that if we need it it is now sufficiently identified.

Mr. Abel: Suppose we number it for identification.

Mr. Resner: Let us give it No. 2, and the first document I read from No. 1.

(The redelivery form is marked Plaintiff's Exhibit 1 and the Seaworthy certificate No. 2, both for identification.)

Q. (By Mr. Resner): Now, during the course of time that you were working in connection with the Fordsdale you got a great many of the orders, as I understand it, from Furness Withy & Company in London?

(Testimony of James West.)

A. Practically everything that went on in the ships for the owners was relayed to us by Furness Withy & Company, in London. [14]

Q. As I understand the picture here, you got information that the Fordsdale was coming to San Francisco.

A. We got that from the British Ministry, first.

Q. Thereupon you communicated with London asking them to secure for you in San Francisco the agency for the ship.

A. Very probably that is what we did.

Q. And Furness Withy & Company thereupon communicated with Shaw, Savill & Albion in London and secured for your San Francisco concern the agency to handle this ship while she was in San Francisco, and in fact on the Pacific Coast?

A. Yes.

Q. Because your operations extended up and down the Pacific Coast? A. Yes.

Q. Is that a correct statement?

A. That is correct.

Q. You also had some correspondence directly with the owners, Shaw, Savill & Albion?

A. I think most of that correspondence was up until the time that we took delivery from the British Government, up to and including the delivery from the British Government. I do not believe we had much, if any, correspondence with Shaw, Savill & Albion after we took the ship off of requisition.

Q. She was taken off requisition on the 24th of April?

(Testimony of James West.)

A. That is right. You may find that we may have sent something to Shaw, Savill & Albion, and they may have acknowledged it, [15] the seaworthy certificate, loading certificate, or Notice of Sailing.

Q. I want to direct your attention to this particular letter of the 29th of May, 1946, to your company, from Furness Withy & Company, Ltd., in London, in which they refer to certain advices they had from Shaw, Savill & Albion, in London, is that right? A. That is right.

Q. This kind of a letter is typical of other correspondence that you had with Furness Withy & Company, Ltd., of London, concerning the handling of the Fordsdale?

A. That is right. They are all in there.

Mr. Resner: May this letter of May 29, 1946 be marked Plaintiff's Exhibit 3 For Identification?

The Court: Very well. Let it be admitted and marked.

Mr. Resner: If you have no objection we can consider these documents in evidence.

Mr. Abel: I have no objection.

(Letter from Furness Withy & Company, Ltd. to Furness (Pacific) Limited dated May 29, 1946, was marked Plaintiff's Exhibit 3 in evidence.)

Mr. Resner: There are several other papers which I would like to call your attention to. Is that a teletype communication?

A. That is a cable. [16]

(Testimony of James West.)

Q. A cable communication with London about this particular operation?

A. Yes. Those are teletypes that you are turning over.

Q. And concern the handling of the ship between your company here and London?

A. The teletypes are with Seattle and Portland, and the cables are with London.

Q. Did your San Francisco Company have the main charge of the ship?

A. San Francisco is the head office on the Pacific Coast.

Q. Here, for example, on the 24th of May, 1946, is a letter addressed to Furness (Pacific) Limited, 220 Bush Street, San Francisco, 6, California, which your office had from Shaw, Savill & Albion Company, Ltd., wherein they state:

“Dear Sirs: Fordsdale

We would thank you for your letter of the 2nd instant, enclosing two copies of Lloyd’s RMC certificate, loading certificate and seaworthy certificate.

Yours faithfully,

Shaw, Savill & Albion Co. Limited,

Ralph Hulser, Secretary and
Assistant Manager.”

That letter refers to the seaworthy certificate which you have produced?

A. No, it does not, because that in all probability—I couldn’t say definitely, but I don’t think it does,

(Testimony of James West.)

because [17] this is long after that this was written, and this seaworthy certificate would not have been sent to them until after the ship sailed from Los Angeles, whereas this certificate which is probably a seaworthy certificate, when the vessel got repairs to her machinery, or something of that nature, and probably this could have taken place about the time the ship came off the requisition.

Mr. Resner: Very well, I will offer this letter as Plaintiff's Exhibit 4, if your Honor please.

The Court: It may be admitted and marked.

(The letter of May 24, 1946, from Shaw, Savill & Albion Co., Limited to Furness (Pacific) Limited was marked Plaintiff's Exhibit 4.)

Q. (By Mr. Resner): You had considerable correspondence with the master, also, which appears in this file? A. Yes.

Q. For example, I show you a letter dated May 23, 1946, to Mr. McKeever, of your company, signed by the master, in which he refers to certain work being done, is that right? A. That is right.

Mr. Resner: I will offer this as Plaintiff's Exhibit 5.

The Court: It may be admitted and marked.

(The letter from the Master to Mr. McKeever dated May 23, 1946, is marked Plaintiff's Exhibit 5.)

(Testimony of James West.)

Q. (By Mr. Resner): Now, I show you four documents signed by [18] the master, can you tell us what they are?

A. I think they are duplicates, aren't they? Yes, they are duplicates. These are seaworthy certificates that we have the ship's officers sign when they leave to show that the ship is in seaworthy condition.

Q. I see. The situation is this, that the master or the licensed officers of the vessel make out this certificate which sets forth in their opinion the vessel is seaworthy? A. Yes.

Q. And they leave it with you? This is required by British law or custom?

A. It is required because under British law the head of the company, if the ship goes to sea, is not responsible; that is proof that it is seaworthy.

Q. They have the ship's officers make out the certificate, so that they meet it in that way?

A. Yes.

Mr. Resner: I will offer this certificate of seaworthiness by the vessel's master next in order.

The Court: It may be admitted and marked.

(The seaworthy certificate was marked Plaintiff's Exhibit 6, in evidence.)

Q. (By Mr. Resner): While the ship was here, Mr. West, certain repairs were made, weren't there?

A. Yes, there were some repairs made. [19]

Q. Did you arrange for the making of those repairs?

(Testimony of James West.)

A. We arranged for them on behalf of the chief engineer and the master.

Q. Do you know where the repairs were made?

A. I believe they were made on board the ship at Encinal Terminals. The ship did not go anywhere to have repairs made.

Q. That is, she did not proceed to any shipyard, or any drydock? A. No, sir.

Q. You paid for those repairs?

A. Yes, we paid the bills for those repairs on behalf of the owners.

Q. Where did you get the money?

A. We got some of the money from prepaid freight, and the rest of the money must have been remitted to us by Furness Withy & Company, of London.

Q. They sent it to you? A. Yes.

Q. When you got this money you not only paid for the repairs on the ship, but you paid also for the stevedore work? A. Yes.

Q. And this loading that had to be done—in fact, anything in connection with serving the work of the ship?

A. That is the way it would be worked.

Q. In other words, your company, as I understand it, hired [20] this stevedore company?

A. Correct.

Q. Do you know which stevedore company it was? A. San Francisco Stevedore Company.

Q. And that was the company that Mr. Thomas was employed by? A. Yes.

(Testimony of James West.)

Q. Did you have a regular working arrangement between Furness (Pacific) Limited and the San Francisco Stevedore Company?

A. We did before the war; we had a contract with them before the war. During the period that the Fordsdale was working we were working under the WSA, because all during the war those bills were paid under lend-lease, and since the war it was discontinued and we have a new contract with the San Francisco Stevedore Company, but we did not have at that time.

Q. I want to show you this document, which is a telegram or radiogram which confirmed your agency, is that right?

A. No, that is a cable that came from the Pacific Steam & Navigation Company, and it asked us to confirm that the Fordsdale was entering into their agency and the expenses would be paid by Furness-Withy and not Shaw, Savill & Albion.

Q. Who was Pacific?

A. That is Pacific Steam & Navigation Company, who handled the passage of the ship through the canal; in other words, if a Furness-Withy ship goes through the Panama Canal the Pacific Steam & Navigation Company paid the cost of transit out of [21] Furness-Withy funds; if a Shaw, Savill & Albion ship went through the canal and they acted as agent they would pay out of Shaw, Savill & Albion funds.

Q. Here is another dated May 17.

A. Expected time of arrival.

(Testimony of James West.)

Q. At San Francisco? A. Yes.

Q. This was sent from Portland?

A. This message came down from Portland.

Q. She went to Portland to load meat?

A. Yes.

Q. You arranged for that loading of meat?

A. Yes.

Q. This is a refrigerator ship A. Yes.

Q. In what hatches did she carry dry cargo?

A. No. 1, I believe.

Q. That was the hatch that was loaded at San Francisco?

A. Well, of course, they may have worked in some of the other hatches at San Francisco, too; I think we did handle some general cargo—I have forgotten the exact details, but we worked more than one hatch in San Francisco.

Q. Your file, here, carries detailed instructions about the loading of this ship; there are, for example, your instructions that went between your office here and Portland, and similar [22] instructions between your office and Los Angeles?

A. That is right.

Q. In other words, you told both places how to load the ship?

A. We laid the ship out here with the captain and with our marine superintendent, who was down here from Vancouver.

Q. That is, you made the plan as to where the cargo would go? A. That is correct.

(Testimony of James West.)

Q. You made that plan with the master and with your marine superintendent of Furness (Pacific) ?

A. Yes.

Q. There appears in this file, also, Lloyd's Register of Shipping, certificate for refrigerating machinery. Is this also something required by law?

A. This is required by law. These are the certificates that that previous letter referred to.

Q. These are certificates that are required by British law?

A. They are required by law and for classification. This was a refrigerated ship. You cannot put anything in your refrigerator chambers until you get that. One is the condition of the chambers, and the other, I think, is the condition of the machinery, and this is a seaworthy certificate which says that she be as now classed without fresh record of survey, subject to leaky rivets in after stringer angle. Forepeak being renewed at next drydocking. Those are the certificates that that previous letter referred to. [23]

Q. You had seen these, I take it?

A. These would go directly to the owners of the ship and not to the agents—they would go to the owner's superintendent.

Mr. Resner: May these certificates be received as Plaintiff's Exhibit next in order?

The Court: They may be admitted and marked.

(Lloyd's Register of Shipping certificates are marked Plaintiff's Exhibit 7, in evidence.)

(Testimony of James West.)

Q. (By Mr. Resner): You sent these directly to Shaw, Savill & Albion?

A. We would do that; if we sent them to Furness, Withy & Company in London, it would be just a waste of effort.

Q. They would in turn have to remit them to the owner? A. Yes.

Mr. Abel: Your Honor, I might be able to shorten this a little bit. We have been going through this file quite a little. We are willing to stipulate that Furness (Pacific) Limited made all of the arrangements for this vessel that were necessary on this coast. The issue that arises is as to whether there was any responsibility on the part of Furness (Pacific) for what went on internally in the ship. Our position is there was not. I think we have enough from the file now to put that issue squarely before the court.

Mr. Resner: I am not familiar with the file.

The Court: I can see that counsel has in mind trying to [24] build up a case here, and since there was someone injured I have allowed the widest latitude in the matter, but I do not see that you and counsel will have any difficulty in agreeing what the factual situation is in relation to it.

Mr. Resner: Might we do this, Mr. Abel, in order to shorten the matter, can we have a stipulation that this file may be considered as having been read into the record here and his Honor peruse it at his leisure?

The Court: No. I cannot do that.

Mr. Abel: I would stipulate this, that whatever

(Testimony of James West.)

is in that file you wish to have introduced in evidence as part of the record may be introduced, provided that if in the course of our discussion on it we cannot agree, then we may bring that matter up with the judge.

Mr. Resner: Very well, that is all right. I will try to speed this along. I will just refer to these things without trying to elaborate on them.

Q. I draw to your attention, Mr. West, a letter of May 1, 1946 to your company here, also from Shaw, Savill & Albion Company, Limited, at London. A. Yes.

Q. I will show you next the list of repairs that we previously talked about. A. Yes.

Q. I show you next a letter of April 25, sent by you, Furness [25] (Pacific) Limited, to Shaw, Savill & Albion Co., Limited, at London.

A. Yes.

Q. There is another letter here dated April 9, 1946, to Shaw, Savill & Albion, of London.

A. That was written in connection with the taking over from requisition.

Q. Of the ship? A. Yes.

Q. And here is a wire dated April 5, 1946, to Shaw, Savill & Albion, London, by Furness (Pacific). A. Yes.

Q. And here is a wire to Furness (Pacific) from Furness-Withy in London, dated April 5, 1946, also with regard to the turning over? A. Yes.

Q. And here is a wire to Furness (Pacific) from Shaw, Savill & Albion, dated April 4, 1946, with regard to the same subject? A. Yes.

(Testimony of James West.)

Q. And this is the long wire that you previously referred to, dated April 3, 1946, to Furness (Pacific) from Portland, the master of the ship?

A. No, that is from Shaw, Savill & Albion.

Q. There is a three-page wire giving details concerning the requisitioning of the vessel. [26]

A. Yes.

Q. The other one is the arrival time?

A. Yes.

Mr. Resner: I am not asking that these be marked separately, but if we could consider this file in evidence before the court then on argument we can direct your Honor's attention to it. Would that be satisfactory?

The Court: That is satisfactory.

Mr. Abel: We have stipulated that this whole file is in evidence, and I think that Mr. Resner and I can get together on a number of these items, now that they have been called to Mr. West's attention, and I will stipulate to doing that, and if any objection arises I will reserve the right to object.

The Court: Very well.

Q. (By Mr. Resner): I see that in your file here you advised Furness-Withy in London concerning the accident to Mr. Thomas. You have had some correspondence with Furness-Withy concerning who would defend, is that correct?

A. I have had some, yes.

Q. And there is a letter here wherein they say under the circumstances they will take the matter up with the owners as to a determination of who would handle the claim, is that correct?

(Testimony of James West.)

A. I believe that is correct, I do not remember off-hand.

Mr. Abel: I won't stipulate to admit any correspondence in that file that has to do with this case.

Mr. Resner: Then probably I should offer that and let his Honor rule on it.

The Court: It will be admitted for the purpose of identification, to be used by either side for any purpose they see fit.

Mr. Abel: All of these items are privileged.

Mr. Resner: I am not trying to put in any privileged communication, so I won't offer that.

Q. Here is a letter dated June 26, 1946, to Furness, Withy & Company, Limited, London, concerning the accident to Mr. Thomas.

A. Yes, that is right.

Q. And then on July 1, 1946, a letter written by Furness, Withy & Company, Limited, in which it mentions what would be done about handling this matter. A. That is right.

Mr. Resner: If your Honor please, I will offer these two letters in evidence.

The Court: They may be admitted and marked.

(The letter of June 26, 1946, from Furness (Pacific) to Furness, Withy & Company, Limited, London was marked Plaintiff's Exhibit 8, and the letter from Furness, Withy & Company, Limited, London, to Furness (Pacific) Limited, dated July 1, 1946, was marked Plaintiff's Exhibit 9.)

(Testimony of James West.)

Q. (By Mr. Resner): Now, Mr. West, as I understand it when this vessel was here you arranged to load her, to repair her, to get berthing facilities for her, take care of these documents [28] which relate to the seaworthiness of the vessel and transmit those to the owners, pay the bills for which you got the money from your principals in London, Furness, Withy & Company, who in turn got it from Shaw, Savill & Albion, took care of all of the business of the ship while she was in California, and in turn arranged for all of the business which took place in Portland or any place else on the Pacific Coast. Would that be a fair statement?

A. That would be the general responsibility of a ship's agent.

Q. The things that I enumerated?

A. Yes.

Q. Would that be a fair statement?

A. Yes.

Q. Is there anything that I have left out which you can add to what you did for the ship?

A. The responsibility of a ship's agent is really very well defined by, we will say, the local agent's association here in San Francisco. They put out a form that lists the duties and responsibilities of a ship's agent. There is any number of them. I mean you may have overlooked a few details but a ship's agent's responsibility is to take care of the ship and its cargo on behalf of the owners of the ship; when I say take care of the ship, I mean the

(Testimony of James West.)

repair of the ship, loading of cargo, or the discharge of the cargo, and everything attendant [29] thereto.

Q. Then you employ and pay the stevedores, too?

A. Yes, that is correct, but we do it all for and on behalf of the owner.

Q. All of the bills of lading and all the other documents that were signed were so done by Furness (Pacific) Limited on behalf of Furness, Withy & Company, owners Shaw, Savill & Albion?

A. I could not say whether Shaw, Savill & Albion is on the bottom of the bill of lading, but all bills of lading signed by an agent are for and on behalf of the owners. It may not state that the owner is Shaw, Savill & Albion, or it may. When we sign it for and on behalf of the owners it means the registered owners of the ship.

Q. Now, the days of April 24 through May 26, 1946, were the days on which you handled this ship?

A. That is correct.

Q. For the owners? A. Yes.

Q. On the 21st of May the man was hurt, that is, five days before the vessel departed for Great Britain?

A. Actually the ship was in our care and custody, you might say, from April 24 to May 26.

Q. April 24 to May 26? A. Yes. [30]

Q. Those are the dates I have given. You say something about a local agents association.

(Testimony of James West.)

A. There is a local agents association here in San Francisco. I cannot tell you just exactly who they are, because we are not a member of the association, but they have a regular formula that they pass out to prospective clients, we will say, listing the duties of an agent, and how much the agent will get for performing those duties.

Q. Those are the duties that your company performs, too? A. Yes.

Q. You are not a member?

A. We are not a member, but we also perform the same duties, you might say.

Q. You are a member of the Waterfront Employers' Association of the Pacific Coast?

A. Yes.

Q. That is an association which is composed of shipowners as well as shipowners' agents?

A. Yes, and stevedore companies.

Q. And stevedore companies, also?

A. Yes.

Mr. Resner: I think that is all.

Cross-Examination

By Mr. Abel:

There are a few details I would like to bring out. What was the first information that you had, Mr. West [31] about the Fordsdale call at this port?

A. The British Ministry of War Transport received a wire from the United States Navy saying that the Fordsdale was coming to San Francisco to discharge, and the Ministry of War Transport

(Testimony of James West.)

wired the owners the vessel would be redelivered as and when the cargo was out.

Q. She was not ordered here in any case by her owners?

A. No. She was under requisition and subject to orders from the United States Navy, I believe.

Q. Did you have any written agreement with the owners of the Fordsdale regarding agency?

A. No.

Q. As to the crew of the vessel, by whom were they employed? A. Shaw, Savill & Albion.

Q. Were they paid while they were here?

A. No, they were not paid by Furness (Pacific) Limited. If any advances were made to the crew we would not have known anything about it, because we would have made the advances to the master at his request, and what he did with the money we would not know.

Q. What was the berth at which the Fordsdale was moored while she was under your agency, that is, after the redelivery?

A. After the redelivery or during the loading of the ship?

Q. Well, both.

A. Well, she was redelivered to us at the Navy Supply Depot [32] in Oakland, and she sailed from the Navy Supply Depot in Oakland for Portland, and when the ship came back to San Francisco Bay she docked at Encinal Terminal, Alameda, which is a public utility, to load this cargo.

(Testimony of James West.)

Q. Furness (Pacific) had no lease on that pier, or anything of that kind?

A. No. As a matter of fact, Furness (Pacific) did not direct the ship to Encinal Terminals. The ship was directed to Encinal Terminals—put it this way—Furness (Pacific) had to direct the ship to wherever the British Government had its cargo, and the cargo was at the Encinal Terminal and it went to Encinal Terminal to load it because the British Government had stored its cargo there.

Q. Did the Furness (Pacific) prescribe any repairs to the vessel?

A. Furness (Pacific) did not prescribe any repairs. The repairs made were at the request of the chief engineer and approved by the master.

Q. In other words, the responsibility for making the repairs was with whom?

A. The chief engineer or the master, if it happened to be a deck repair or a tank cleaning job.

Q. Did you or anybody from your organization inspect any of the repair work that was done here?

A. No, we are not qualified. If it was classification repair [33] work it would be inspected by a Lloyd's Surveyor, and the chief engineer, and Lloyd's Surveyor would issue a certificate, if it was not classification work, just ordinary voyage repairs, the chief engineer would approve them.

Q. Do you recall approximately what proportion of the total homeward cargo was loaded here, that is in California ports, as distinguished from Portland?

(Testimony of James West.)

A. Well, I do not recall, but I would say it was less than 20 percent of the total cargo that was loaded here at San Francisco.

Q. Was it loaded after redelivery, or before?

A. All homeward cargo was loaded after redelivery.

Q. Under whose direction were the stevedore operations, Mr. West?

A. On a British ship the chief officer directs the stevedore operations. That is so on all British ships. It is in charge of the chief officer and the master. We have a liaison man between the chief officer and the stevedores.

Q. The final responsibility for distribution of cargo for stability purposes depends upon you or upon the master?

A. It depends upon the master of the ship. He works it out in conjunction—generally speaking the master of the ship and the chief officer of the ship work out the details and in conjunction with either our marine superintendent or the liaison officer, depending upon who may be there, he relays [34] them to the stevedores.

Q. So that any instructions you might give to your people in Los Angeles would be merely suggestive to the master and not mandatory?

A. Well, they would have originated with the ship in the first place; any ideas we passed to either Portland or Los Angeles were discussed with the ship before we did it.

Q. So you were really relaying the master's instructions in those instances?

(Testimony of James West.)

A. That is right. We were telling the people in Los Angeles to prepare to put cargo in certain spaces where the master required it be put.

Q. Now, are Shaw, Savill & Albion qualified to do business in California? A. No.

Q. Do they have any office in California?

A. No.

Q. Do they own property here?

A. No. I say "No" to the best of my knowledge.

Q. If they did would you know that?

A. No—I might or I might not—I probably would not. I know they are not set up to do business in the State of California because Shaw, Savill & Albion have never had a ship here before.

Q. What is the regular route operated by Shaw, Savill & Albion [35] vessels?

A. London to Australia, or London to South Africa, or Australia and New Zealand.

Q. Have they ever had a vessel in California before?

A. As far as I know they never had one. I have been here 24 or 25 years and we have never acted as agent for them before. If they ever had a ship before we did not handle it.

Q. How long have you been with Furness (Pacific)—I believe you have already answered that.

A. 24 years.

Q. Do you have any relations, whatever, with Shaw, Savill & Albion, I mean as distinguished from when that vessel was here? A. No.

Q. When did this transaction wind up?

(Testimony of James West.)

A. August 19, 1946, when we sent the final account to Furness-Withy in London.

Q. And since that time you have had no dealings with them on any other matters?

A. Only to notify them of the suit of Mr. Thomas; aside from that, we have not had any dealings with them at all.

Q. Did Furness (Pacific) at any time since the filing of this suit, hold funds that belonged to Shaw, Savill & Albion? A. No.

Q. What about prepaid freight?

A. I think the prepaid freight was all disbursed long before [36] this suit was filed—When was this suit filed?

Q. This suit was filed in July.

A. The ship sailed in May and the prepaid freight that would be received would have been disbursed long before July, because we had to pay bills. As soon as you collect the prepaid freight you start paying bills.

Q. Might I refresh your memory a little? When I first discussed this case with you in July, shortly after process was served, you told me then that there was some prepaid freight still on hand at that time that had not been yet forwarded.

A. Well, I will change that and say we did have \$14,000, we probably had \$14,000 credit on the books for account of Shaw, Savill & Albion, but we had been paying Shaw, Savill & Albion bills out of our own pocket. You have to pay bills within a reasonable time. They had a credit in prepaid freight of \$14,000, and that credit remained there until the

(Testimony of James West.)

account was finally settled, but actually there was no Shaw, Savill & Albion cash at that time.

Q. Because what you had collected was earmarked to pay bills? A. Yes.

Q. On account of the vessel? A. Yes.

Q. In so far as you know, Mr. West, did any of your employees have any knowledge of the circumstances of this accident, at all?

Mr Resner: I think that is immaterial. [36]

The Court: I will allow the question.

A. The answer is No.

Q. (By Mr. Abel): What was the first knowledge that you had of the accident?

A. A friend of mine in Balfour Guthrie & Company was served with a summons and he told me that I was about to be served with it, because he had referred the attorney to me. I then wrote to London and got in touch with the stevedore company, and the stevedore company told me that Mr. Thomas had been injured.

Q. No accident report ever came to your attention?

A. No; prior to that time I did not know a thing about it.

Mr. Resner: I might say, your Honor, that the War Shipping Administration informed me that the company that had the Fordsdale was the Donaldson & Company Line of London, for whom Balfour Guthrie & Company were agents. I pursued this for about ten days before I finally found out who it was. It is twelve o'clock now, and I am going to ask an adjournment, because we have two

(Testimony of James West.)

gentlemen, one from the Longshoremen, and one from the International Union, as we want to present the situation from the union's point of view. We think it is very material.

Mr. Abel: I would like to know how Mr. Resner reaches that result, because my feeling is that any material of that nature is strictly a red herring. [37]

The Court: Have you finished with this witness?

Mr. Resner: Yes.

The Court: I do not think you will find any difficulty in entering into a stipulation as to anything else that took place, so far as the record is concerned.

Mr. Abel: You and I can go through the file and we can pick out the things we want.

Mr. Resner: Yes.

Mr. Abel: Might I also ask a stipulation that I may introduce whatever I wish from that file?

Mr. Resner: Yes, certainly, I have no objection.

Mr. Abel: I would like to point out I have one other witness here Mr. West said that there was a man operating as a liaison officer between Furness (Pacific) and the vessel, and I have brought him here in order that no inference might arise that he knew anything about the case, other than what Mr. West said. Now, I take it that you are willing to stipulate that he would so testify.

Mr. Resner: Yes.

The Court: The case will be continued until tomorrow morning.

(Thereupon an adjournment was taken until tomorrow, Saturday, March 22, 1947.) [38]

Saturday, March 22, 1947, 10:00 o'Clock A. M.

WALTER BELL

called as a witness on behalf of Plaintiff; sworn.

The Clerk: Will you state your name to the court? A. Walter Bell.

Direct Testimony

By Mr. Resner:

Q. Where do you live?

A. I live in El Cerrito.

Q. What is your occupation?

A. Vice president of the International Longshoremen and Warehousemen's Union, Local 10.

Q. Is that the Longshoremen's Local Union of San Francisco? A. Yes.

Q. How long have you been a longshoreman?

A. Twenty years.

Q. How long have you been an official of the union?

A. About six months this time. In 1941 and 1942 I was secretary-treasurer.

Q. Are you familiar with the contract in existence between your organization and the Waterfront Employers Association of the Pacific Coast?

A. Pretty familiar.

Mr. Resner: You have seen it, I take it.

Mr. Abel: Yes, I have seen it. I object to the introduction of it in evidence. [39]

Q. (By Mr. Resner): Let me show you the agreement, Mr. Bell and ask you if this is the agreement that has been in existence during the past few years.

(Testimony of Walter Bell.)

A. That is the agreement we have been working under until this new one which has not come out yet, which has not been printed.

Q. You have just negotiated and reached a new agreement within the last couple of weeks?

A. Yes.

Q. But prior to that the agreement I hold in my hand was the agreement between the union and the Waterfront Employers Association? A. Yes.

Mr. Resner: I will offer it in evidence.

Mr. Abel: I object to it on the ground it is irrelevant to the issues.

The Court: Indicate for the record the purpose of the offer of this testimony?

Mr. Resner: The contract is between the union, on the one hand, and the Waterfront Employers on the other, of which Furness (Pacific) Limited, one of the defendants in this case, and the agent of Shaw, Savill & Albion is a member. The agreement provides that upon request the union shall provide longshoremen to work ship for these employers, and that the workmen shall work as directed, and in the event that the longshoremen object to conditions on the vessel which they claim [40] are unsafe, that they shall continue to work and the matter shall be referred to the port committee for determination. Now, I reason from that, your Honor, that an obligation is imposed on all longshoremen, including the plaintiff, Thomas, in this case, to work as directed for such people as the defendant in this case, Furness (Pacific) Limited, and if there is an obliga-

(Testimony of Walter Bell.)

tion imposed upon longshoremen to work as directed, as in this contract, and they refuse to work, it is considered a breach of the contract; and thereby technically a very heavy responsibility and obligation, particularly where they maintain conditions are unsafe, and it seems that when longshoremen have a foreign boat like the Fordsdale, of Shaw, Savill & Albion, which comes into our port and takes advantage of our longshoremen, our docks and facilities, that thereby they consent to the jurisdiction in cases of this kind, and should not be permitted to stand behind the technical rule that has apparently existed heretofore. That is the underlying theory and philosophy of the argument which I am making.

Mr. Abel: I have no doubt that Mr. Resner's argument would be very, very persuasive to legislators, but there is no showing on the record that this man is a member of this union, and it is rather abrupt to take judicial notice of the fact that the Waterfront Employers Association had this contract, and he assumes that this man, the plaintiff in this case, is in good standing in the union. My position is that this contract [41] does not purport to confer any right upon the members of the union in so far as a cause of action is concerned, and that if it did, there is no showing on this record that this man can take advantage of the terms of the contract.

Mr. Resner: I might say this, I had not expected counsel would raise the point that Mr. Thomas is not a member, and I told him not to

(Testimony of Walter Bell.)

come, because he has been working nights. He is a member of the union, there is no question about that, and I thought we could stipulate to that to obviate the necessity of bringing him in. He is a longshoreman, bound by this contract, Section 11 of which says, "The employer shall have the right to discharge any man for incompetence, insubordination, or failure to perform the work as required, in conformance with the provisions of this agreement. If any man feels that he has been unjustly discharged or dealt with his grievance shall be taken up as provided in section 10." Now, your Honor, that is what they have down there, is a Grievance Committee, and where a dispute occurs between the union member and the employer, the man's grievance is referred to the Grievance Committee for determination. That is correct, is it not, Mr. Bell?

A. Yes.

Mr. Resner. That being the case, and these stevedores who are working on the Fordsdale claiming the ship was unsafe, their only remedy would have been to take it up with the Grievance Committee. [42]

The Court: They would be compelled to work or there would be a breach of the contract. But that is a matter separate and apart from the issues presented in this case, which is the question of jurisdiction. Just one other remark. You should appear—and if there is a man that could do a better job I don't know of him—before a committee in Congress to support some legislation in that respect.

(Testimony of Walter Bell.)

Mr. Resner: Your Honor may be right, but I feel duty bound to make a record in this case, because of the unusual situation.

The Court: You make the best record you can.

Mr. Resner: I will offer it for identification.

The Court: Let it be admitted and marked for identification.

(The Agreement between International Longshoremen's and Warehousemen's Union and Waterfront Employers Association of the Pacific Coast was marked Plaintiff's Exhibit 10 for Identification.)

Mr. Resner: Will your Honor rule on the admissibility of it?

The Court: I will sustain counsel's objection to the admissibility of that testimony. Let the record so show.

Q. (By Mr. Resner): Mr. Bell, is Furness (Pacific) Limited a member of the Waterfront Employers Association?

A. I believe it is; I do not know that to be a fact, but I believe it is.

The Court: What was the testimony as to that which we had? [43]

Mr. Abel: It was that the Furness (Pacific) Limited is a member.

The Court: Who was it that testified to it?

Mr. Resner: Mr. West, of the Furness (Pacific) Limited stated they were a member of the Waterfront Employers Association.

(Testimony of Walter Bell.)

Q. And being a member of the Waterfront Employers Association Furness (Pacific) Limited would be a party to the contract which is here for identification? A. It would.

Q. Will you tell us how orders are placed for longshoremen?

A. Well, if Furness (Pacific) needed longshoremen they contact the Waterfront Employers Association, where all the orders for the day are filed, and the Waterfront Employers Association passes that on down to the hiring hall, to the chief dispatcher, as to the gangs each firm wanted orders filled for, in other words if they needed 50 gangs of men and only 30 were available the Waterfront Employers would decide who would get the gangs.

Mr. Abel: I would like to object to this entire line of testimony on the same grounds.

The Court: I will allow it subject to your objection and subject to a motion to strike. I want him to get the best possible record he can so that if there is any possibility of our Circuit Court doing otherwise I am willing to abide by [44] their decision. If I did otherwise under the state of the record as I anticipate it might be, I would be engaged in an idle act. Do you follow me?

Mr. Abel: Yes.

Q. (By Mr. Resner): A hiring hall is maintained jointly by the Union and the Waterfront Employers' Association? A. Yes.

Q. The men come down there and register for work on the piers, and when the orders come in they are dispatched according to the orders?

(Testimony of Walter Bell.)

A. That is correct, to this extent, that there are some men fill in on the gangs of the men there, so he knows how many gangs he has available.

Q. That is, there are extra men to fill out vacancies on the regular gang to make up the gang?

A. That is right.

Q. Do these longshoremen of yours work all foreign vessels that come into San Francisco Harbor?

A. That is right.

Q. Is there any other group of stevedores or longshoremen that work vessels, merchant ships in San Francisco harbor, other than members of your Union? A. No.

Q. In other words, your Union, Local 10, furnishes all the stevedores for merchant ships in San Francisco Harbor? [45] A. That is right.

Q. And surrounding waters?

A. Bay area.

Q. Does your organization also furnish longshoremen at all the ports on the Pacific Coast, other than the port of Tacoma? A. That is right.

Q. A couple of small Oregon ports?

A. Tacoma and one of the small ports.

Q. At Seattle, San Pedro and San Diego they are under the same agreement? A. Yes.

Q. When foreign ships come in here that are not members of the Waterfront Employers' Association, what is the situation there?

A. They generally work through the same agency, as far as the orders are concerned, they go to the Waterfront Employers' and come down to us.

(Testimony of Walter Bell.)

Q. Your orders come through a member of Waterfront Employers?

A. A member notifies headquarters and they in turn notify us, regardless of what ship it is.

Q. I want to show you, Mr. Bell, a list of the shipping members of the Waterfront Employers' Association of the Pacific Coast, a list of the associate members of the Waterfront Employers' Association of the Pacific Coast, a list of the shipping stevedore and terminal members of the Waterfront Employers of the Pacific Coast. Are you familiar with this list of employers and members? [46]

A. Well, I would say they are all members, and we work for them.

Mr. Resner: I would like to offer a list of the Waterfront Employers of the Pacific who are parties to the agreement in evidence.

The Court: Let it go in subject to the same objection.

Mr. Abel: I note the same objection as before for the record, your Honor.

The Court: Let the record so show.

(The list of Waterfront Employers of the Pacific who were parties to the agreement in evidence was marked Plaintiff's Exhibit 11.)

Q. (By Mr. Resner): Is it a fact, Mr. Bell, that when foreign ships come here that if the company itself is not actually a member of the Waterfront Employers' Association of the Pacific Coast that then such foreign ships or foreign companies

(Testimony of Walter Bell.)

obtain one of the members of the Waterfront Employers' Association to get the longshoremen to work the ship?

A. I believe that to be correct, because the stevedore company works a ship.

Q. You are familiar, are you, with the San Francisco Stevedore Company that Mr. Thomas worked for on the day in question? A. Yes.

Q. That is a company that works in San Francisco? A. Yes.

Q. That is a company for whom your men work every day? A. That is right. [47]

Q. Is that right? A. Yes.

Q. And when your men go aboard a ship to discharge or load cargo, are they required to work under the Union contract with the Waterfront Employers' Association? A. That is right.

Q. And do the men have any basis for refusing to work under that contract, Mr. Bell, or are they required to work?

A. No, there is no real basis for refusing to work; if it be unsafe or there are unsafe conditions they notify the grievance committee and they usually send someone down to pass judgment on it.

Q. Is it a frequent occurrence that foreign ships come in here to be worked which are not members of the Waterfront Employers Association or which do not have offices in this area?

A. That is correct.

Q. A great number of foreign ships come into San Francisco Harbor?

(Testimony of Walter Bell.)

A. There is quite a large number come in in normal times.

Q. Is it a fact that sometimes a ship comes in once and you never see it again?

A. That happens; a French ship may come in for a certain purpose and we never see it again.

Q. The usual custom is that that ship is worked through the agency of one of the members of the Waterfront Employers Association? [48]

A. Yes.

Q. And use your longshoremen? A. Yes.

Q. Would it also be the case that they would dock at one of the regular docks in San Francisco Harbor and use one of the State owned docks here?

A. Yes.

Q. Are all of the wharves and docks around this area State owned?

A. Well, on the San Francisco Waterfront they are, but in Oakland they are not.

Q. The San Francisco Waterfront is all State owned? A. Yes.

Q. And all the docks and piers are State owned?

A. That is my understanding.

Q. What about Oakland?

A. I understand those belong to the City.

Q. Are you referring now to the Howard Terminal and various docks—you mean they are owned by the State and some maybe privately owned?

A. I have always understood they were not State owned.

(Testimony of Walter Bell.)

Q. Over there the main docks are Howard Terminal and Encinal Terminal, are they?

A. They are the principal docks now.

Q. Do you know who owns those two? [49]

A. No, I don't.

Q. Has the Union in the past few months, in fact since the Longshoremen's strike of last summer, been endeavoring to work out with the Waterfront Employers' Association some basis for responsibility in case of accident on the part of these foreign ships?

A. There has been a general desire for safety and prevention of accidents along that line that we have endeavored to have them incorporate in the contract.

Q. There are a great many accidents on the waterfront? A. Yes.

Q. Has the Union made an effort with the employers to reach some basis for agreement with these foreign ships that come in here in case accidents happen, work up some basis for agreement so that they would be responsible?

Mr. Abel: I would like to object on the further ground that it is entirely outside of the scope of this case.

The Court: The objection will have to be sustained.

Mr. Resner: That is all.

The Court: Any questions?

Mr. Abel: No questions.

(Testimony of Walter Bell.)

At this point I would like to make a motion to strike all of the testimony of the witness on the ground that it is outside the scope of this case and entirely irrelevant under the pleadings. [50]

Mr. Resner: I do not think it should be stricken. I think it should remain for the value that it has to your Honor in ruling on the case.

The Court: I will not pass on it at this time. I will give you a full opportunity to be heard.

Mr. Abel: Then I submit the motion. That is all, Mr. Bell.

Mr. Resner: I only want to put in evidence certain records so that they can be marked for the record.

Mr. Abel: I have taken out the ones that you picked out yesterday and those are all in evidence. There are some others, if you want to stand here we will look at and I will put them in. I merely want to have them identified for the record.

Mr. Resner: I will do any way you want.

Mr. Abel: In the state of the record I do not think a ruling is necessary on the motion to quash.

The Court: Very well.

The Court: Is there anything else you have in mind?

Mr. Resner: I have some papers I want to put in. I would like to have a couple of minutes to go over these.

The Court: While you are doing that we will take a recess.

(After recess.)

(Testimony of Walter Bell.)

Mr. Resner: At this time, counsel and I have gone over certain exhibits from the file that the defendant produced here. I want to offer in evidence No. 12 to 30 inclusive on behalf [51] of the plaintiff.

The Court: They may be admitted and marked.

Mr. Abel: At this time I want to offer Defendants' Exhibit A to M inclusive, which are additional items from the file, and are intended to be generally descriptive of the conditions under which the Fordsdale operated on this coast.

The Court: Let them be admitted and marked.

(Thereupon the case was submitted on memorandum to be filed.)

CERTIFICATE OF REPORTER

We, official Reporters and Official Reporters, pro tem, Certify that the foregoing transcript of 52 pages is a true and correct transcript of the matter therein contained as reported by us and thereupon reduced to typewriting, to the best of our knowledge.

/s/ EDWARD W. LEHNER. [52]

[Endorsed]: No. 11765. United States Circuit Court of Appeals for the Ninth Circuit. George Thomas, Appellant, vs. Furness (Pacific) Limited, a corporation and Shaw, Savill & Albion, Ltd., Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed October 20, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit. [54]

United States Circuit Court of Appeals for the
Ninth Circuit

No. 11,765

GEORGE THOMAS,

Appellant,

vs.

FURNESS (PACIFIC) LIMITED, et al.,

Appellees.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL AND DESIGNATION OF THE RECORD ON APPEAL

Comes now appellant George Thomas, by his attorneys Messrs. Gladstein, Andersen, Resner & Sawyer and Herbert Resner, Esq., and files herewith his statement of the points upon which he intends to rely on the appeal herein, as follows:

- 1) The Order of May 2, 1947, of the District Court granting defendants' Motion for Summary Judgment, and the Order dismissing the complaint are contrary to law.
- 2) The Order of May 2, 1947, of the District Court granting defendants' Motion for Summary Judgment, and the Order dismissing the complaint are contrary to the evidence.
- 3) The Order of May 2, 1947, of the District Court granting the Motion of defendant Shaw, Savill & Albion, Ltd., to quash service of summons is contrary to law.
- 4) The Order of May 2, 1947, of the District Court granting the Motion of defendant Shaw, Savill & Albion, Ltd., to quash service of summons is contrary to the evidence.
- 5) The Order of May 2, 1947, of the District Court that the complaint herein be dismissed with prejudice is contrary to law.
- 6) The Order of May 2, 1947, of the District Court that the complaint herein be dismissed with prejudice is contrary to the evidence.
- 7) The District Court's finding and order that Shaw, Savill & Albion, Ltd., was not within the jurisdiction of said Court for the purposes of this suit is in error.
- 8) The finding and order of the District Court that Furness (Pacific) Limited was not a proper party defendant herein, and not a proper party to be served with process as agent for and representative of Shaw, Savill & Albion, Ltd., is in error.

9) In an action for maritime tort committed by a foreign corporation, or foreign vessel, within the territorial jurisdiction of the District Court, as in this case, such a foreign corporation or foreign vessel should be held to consent to service of process and jurisdiction for the purposes of such an action, and the agent or representative of such foreign corporation or foreign vessel which admittedly is within the jurisdiction of the Court shall be deemed to be a proper agent or representative for the purpose of service of process upon such a foreign corporation or foreign vessel in connection with such an action. The interests of justice and of law are served by such a holding.

Appellant designates the entire record in the court below, that is, the entire Clerk's Record and the entire Reporter's Transcript, as the record on appeal herein.

Dated: November 24, 1947.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,
/s/ HERBERT RESNER,
Attorneys for Appellant.

[Endorsed]: Filed May 25, 1947.

[Acknowledgement of receipt of service.]